

May 19, 2011

Eagle Conservation Plan Guidance

Division of Migratory Bird Management

U.S. Fish and Wildlife Service

4401 North Fairfax Drive, Mail Stop 4107

Arlington, VA 22203-1610

RE: Public Comment on Eagle Conservation Plan Guidance

I am writing on behalf of juwi Wind, LLC, a wind energy developer headquartered in Boulder, Colorado. I wish to express concern about the wind energy development and eagle conservation planning guidance drafted by the U.S. Fish & Wildlife Service ("FWS"). Considering that the wind industry's impacts to wildlife are minor, particularly compared to other forms of energy and human activities, these guidelines are unfairly strict and will have a potentially devastating effect on wind power development in the US – an initiative that our current President and members of his Cabinet purport to endorse. The Guidance should have been drafted to address the broad range of industries that actually affect Eagles. As it is wind power has been singled out, although the biggest threat to eagles in the energy industry is actually transmission lines which could be broadly addressed and would impact many sectors of energy generators evenly and likely also provide more effective protection for eagles.

The current Guidance was not well formulated to address issues related to wind power development, unless the intent was to permanently halt further development and also significantly hamper projects currently operating. A two and a half year study by a Federal Advisory Committee had already devised guidelines acceptable to industry leaders, wildlife conservation groups, scientists and others yet that was scrapped by FWS, showing a lack of willingness to allow wind power development to continue. We urge you to go back and adopt the previous guidelines passed by the Federal Advisory Committee.

As drafted there are many problems with the requirements included in the Guidance. The following is a limited list highlighting the most major issues:

1. The permits are revocable and of a limited duration. As FWS is surely aware, wind energy project are generally built and financed under a 20-year power purchase agreement. No bank or power purchaser will have the necessary security to finance or purchase power from a project that may or may not be able to operate. These permits must be changed to function more like an Incidental Take Permit – they must be irrevocable and of the same duration as the life of the project.
2. The permits are limited in number. They should not be limited by number but rather according to the impact to the species of concern.

3. The 10 mile radius relating to survey activity. The industry groups recommended a radius closer to two miles. While we agree that nest should be identified within the 10 mile radius, surveying should be done in a smaller, two mile radius as that is sufficient to assess eagle activity within a project area and thereby the risk of take.
4. While it is somewhat unclear, the geographic coordinates used in the description of the area in which permits will be granted seems to indicate that there will be no permits issued for golden eagles east of the Mississippi River. In other words, all wind development east of the Mississippi would be halted. This is hardly a wise outcome, given that the vast majority of the load in the United States in the eastern portion.
5. The draft Guidance is defacto rule making without going through the rulemaking procedure. If it is left to the field offices to implement as guidelines, and the resulting application will be regionalized leading to inequitable treatment of development and enforcement of the guidelines. In order to ensure equitable enforcement the guidelines will need to be treated as rules.

Wind energy is one of the most environmentally friendly means to generate electricity. The Guidance threatens wind as a source of renewable, domestic energy through unfair guidelines governing the siting of wind turbines. States, wildlife conservation organizations, wind energy industry representatives, scientists, tribes, and federal officials worked through a Federal Advisory Committee to submit consensus recommendations that are based on sound science and lay out a balanced path for both deploying wind power and protecting wildlife. Through this process, the wind energy industry was voluntarily agreeing to be held to a higher standard for wildlife protection than any other industry in the United States. Please move forward with their recommendations instead of implementing the current proposed guidelines.

Sincerely,
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